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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,078	11/07/2006	Ronald Geoffrey Hamblin	03164.0193USWO	4474
23552 7590 03/30/2010 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER DEMEREE, CHRISTOPHER R	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 03/30/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/554,078	Applicant(s) HAMBLIN ET AL.	
	Examiner CHRISTOPHER DEMEREE	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 and 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elkin (US 978569 A) in view of Beerend (US 3155304 A).

Regarding claims 1, 3, 9 and 13-18, Elkin teaches a folded box comprising a rectangular base (1), upright side walls and end walls (6), and a locking assembly (Page 1 lines 110-113) that holds the side walls and the end walls in upright positions with the corners of the tray and therefore the corners of the baked food product produced in the tray being straight and squared (see Fig. 5; Examiner notes that the walls are in perpendicular relationship to the base). Elkin lacks teaching that his paperboard container is used for baking. Examiner considers any box formed from a blank to comprise walls that can be folded outwardly and downwardly to deform said box into a collapsed state.

Beerend teaches a baking pan made of paper and that it is old and well-known to use paperboard trays in baking applications (Col 1 lines 10-15). Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's application to modify Elkin's paperboard tray to be suitable for baking, as taught by Beerend.

Regarding claim 2, Elkin, as modified above, teaches a folded box wherein each side wall of the tray is inwardly concave along its length between the end walls so that the side walls can flex outwardly to form side walls that are perpendicular to the base and perpendicular to the end walls as the food product in the tray expands during baking. Examiner considers paperboard capable of flexing and therefore the sidewalls of Elkin's container are capable of bending to form a generally concave sidewall.

Regarding claims 4, 6 and 10, Elkin, as modified above, teaches a folded box wherein the locking assembly includes locking tabs (Elkin; tab at the end of flap 12) on the side walls and slots (Elkin; 13) in the end walls that receive the locking tabs and releasably hold together the end walls and the side walls.

Regarding claim 5, Elkin, as modified above, teaches a folded box wherein the side walls include flaps (Elkin; 11 and 12) that form part of the end walls of the tray.

Regarding claims 7, 11 and 12, Elkin, as modified above, teaches a folded box including gusset corners (Elkin; 15) in a lower section of the tray.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elkin in view of Beerend as applied to claim 7 above, and further in view of Groh (US 5050766 A).

Regarding claim 8, Elkin, as modified above, teaches everything except gusset corners that extend no more than one third the height of the tray. Groh teaches a collapsible ice chest comprising folds (40 and 42) that create lower gusset corners (in conjunction with fold 30); said lower gusset corners extend no more than one third the height of the tray (see Fig. 4). It would have been obvious to one of ordinary skill in the

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art at the time of Applicant's invention to further modify Elkin's container to include the fold lines (Groh; 40 and 42) in order to make the container collapsible, as taught by Groh.

Response to Arguments

4. Applicant's arguments, see Pages 6-11, filed 12/9/2009, with respect to the rejection(s) of claim(s) 1-7 and 9-13 under USC 103(a)-- Chase in view of Beerend have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of USC 103(a)-- Elkin in view of Beerend.

5. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782